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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA 11-179

Opinion Delivered March 28, 2012

CLIFFORD FLOWERS
APPELLANT

V.

AMERISOURCEBERGEN DRUG CORP.
APPELLEE

APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT, [NO. CV-2010-69-2-5]

HONORABLE JODI RAINES DENNIS, JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

The appellant, Clifford Flowers, appeals from a November 5, 2010 order by the Jefferson County Circuit Court denying his petition to quiet title and dismissing with prejudice all claims and causes of action asserted by him. We affirm.

Factual and Procedural Background

Appellant is a licensed pharmacist and the owner of Flowers' Pharmacy in Pine Bluff, Arkansas. There exists also a corporate entity called Flowers' Pharmacy, Inc., which has been registered with the Arkansas Secretary of State since December 31, 1990. In August 2005, Flowers signed a contract with appellee, Amerisourcebergen Drug Corp. ("Amerisource"), for the wholesale supply of drugs to Flowers' Pharmacy.[1] On the application portion of the

[1]Flowers claims that Flowers' Pharmacy, Inc. contracted with Amerisource "for many years," but the record contains only one such contract, dated August 8, 2005. In any event, the August 8, 2005 contract is the agreement relevant to the present controversy.

contract, Flowers identified the legal name of the applicant as "Flowers Pharmacy" and checked the box describing the pharmacy as a sole proprietorship. The other options available but left unchecked by Flowers were corporation, partnership, or LLC. Under the section labeled "Ownership," Flowers filled in his name and address and, in the blank provided for a description of his "Title with Applicant," wrote "Owner/Pharmacist." The second and third pages of the purchase agreement contained a blank to be filled in with the corporate name of the applicant. Flowers filled in each blank with "Flowers Pharmacy." He signed the contract with "Clifford Flowers, owner."

At some time thereafter, a dispute arose between appellant and Amerisource regarding payment due on the contract, and Amerisource filed suit against "Clifford Flowers d/b/a Flowers' Pharmacy" in the district court of Denton County, Texas.[2] Appellant was personally served with the complaint but did not file an answer, and the Texas court entered a default judgment against "Clifford Flowers d/b/a Flowers' Pharmacy" on December 21, 2006. Appellant did not appeal or otherwise challenge the default judgment in Texas.

I. *Registration proceeding*, CV-2007-169-1-5

On February 20, 2007, Amerisource filed an application to register the Texas default judgment in Jefferson County Circuit Court, Fifth Division. In his answer, appellant admitted that he did not appeal the default judgment (entered on December 21, 2006) in Texas. In responses to requests for admission, appellant admitted that he had entered into a

[2]The record does not contain the complaint or the date it was filed.

purchase agreement with Amerisource and identified himself as the owner of "Flowers Pharmacy." Appellant also admitted that he was personally served with the Texas complaint.

The circuit court set a hearing on the application for registration for December 17, 2007. At the hearing, appellant rested on the aforementioned pleadings and did not raise any arguments challenging the validity of the default judgment. On December 17, 2007, the circuit court entered an order registering the default judgment and filing it with the circuit clerk of Jefferson County pursuant to the Uniform Enforcement of Judgments Act.[3] A writ of execution instructing the Sheriff of Jefferson County to enforce the judgment against Clifford Flowers was entered on January 14, 2008.

Appellant moved for an injunction against enforcement of the default judgment on the grounds that the Texas court never had personal jurisdiction over him. Specifically, appellant argued that the default judgment was void because he was never personally served or named as a defendant and had never done business as an individual with Amerisource; because "Clifford Flowers d/b/a Flowers' Pharmacy," which was the named defendant against whom the judgment was rendered, did not exist as an entity; and because Flowers' Pharmacy, Inc., was never named as a defendant or served with process. Three months later, appellant filed

[3]Ark. Code Ann. § 16-66-602 (Repl. 2005) provides that "[a] judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a court of this state and may be enforced or satisfied in like manner." Once the foreign default judgment was accepted as proper for registration, it became, in effect, an Arkansas judgment and could be enforced by Arkansas courts. *Nationwide Ins. Enter. v. Ibanez*, 368 Ark. 432, 246 S.W.3d 883 (2007).

another motion making the very same arguments he made in his petition for an injunction, asking the court to vacate the default judgment or, alternatively, to enjoin its execution. After a hearing on October 1, 2009, the circuit court denied all of appellant's motions.[4] Appellant did not appeal any of the circuit court's rulings in the registration proceeding.[5]

II. *Petition to Quiet Title*, CV-2010-69-2

On January 29, 2010, appellant filed a petition to quiet title in Jefferson County Circuit Court, but in a different division and in front of a different judge. In this petition, appellant not only asked the court to quiet title as to forty-three parcels of real property that were subject to the default judgment, he also once again asked the circuit court to vacate the default judgment and permanently enjoin its execution against him. On April 5, 2010, Amerisource filed a motion to transfer the case to the Fifth Division of Jefferson County Circuit Court, to the judge who had presided over the registration proceeding. Also on April 5, 2010, Amerisource filed a motion to dismiss and for attorney's fees, arguing res judicata and collateral estoppel on the grounds that all matters in the petition to quiet title had been fully

[4]The court took judicial notice of the fact that in his responses to Amerisource's requests for admission, appellant had admitted that he had been personally served with the Texas complaint and admitted that he had entered into a purchase agreement with Amerisource in which he identified himself as owner of "Flowers Pharmacy."

[5]On February 9, 2010, appellant filed a motion to set aside the circuit court's October 28, 2009 order denying his motions for a stay, an injunction, and to modify the default judgment or enjoin its enforcement. Apparently, there has been no ruling on this motion. Regardless, a circuit court's order denying a motion to vacate a default judgment is itself an appealable order. *Marcinkowski v. Affirmative Risk Mgmt. Corp.*, 322 Ark. 580, 910 S.W.2d 679 (1995).

and finally adjudicated. On June 21, 2010, the court granted the motion and transferred appellant's quiet-title action to the Fifth Division, where a half-day bench trial was held on September 27, 2010.

In the quiet-title action, appellant made the same arguments he made in the registration proceeding. By order dated November 5, 2010, the circuit court denied appellant's petition to quiet title and dismissed with prejudice all claims and causes of action asserted by him. It is from this order that appellant now appeals. He contends, again, that the default judgment obtained in Texas and registered in Arkansas is void for lack of personal jurisdiction and cannot be enforced against him personally. For this reason, he argues, the circuit court erred in denying his petition to quiet title.

Discussion

We review quiet-title actions de novo.[6] We will not reverse the trial court's findings of fact unless they were clearly erroneous.[7] A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been committed.[8]

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[6]*Dye v. Anderson Tully Co.*, 2011 Ark. App. 503, ___ S.W.3d ___ (citing *Strother v. Mitchell*, 2011 Ark. App. 224, ___ S.W.3d ___).

[7]*Boyd v. Roberts*, 98 Ark. App. 385, 255 S.W.3d 895 (2007).

[8]*Ward v. Adams*, 66 Ark. App. 208, 989 S.W.2d 550 (1999).

Appellant has appealed only from the November 5, 2010 order in case CV-2010-69-2, the quiet-title action. He argues on appeal that the petition should have been granted because the default judgment itself was void for lack of personal jurisdiction—that it was invalid and unenforceable against him personally because it was rendered against "Clifford Flowers d/b/a Flowers Pharmacy." However, while jurisdiction is a permissible ground for attacking a foreign judgment, it is properly raised in the registration hearing,[9] not a separate action.[10]

In addition, the matter of the validity of the default judgment was barred under res judicata, which has two facets: claim preclusion and issue preclusion. Under issue preclusion, or collateral estoppel, a decision by a court of competent jurisdiction on matters which were at issue, and which were directly and necessarily adjudicated, bars any further litigation on those issues by the plaintiff or his privies against the defendant or his privies on the same issue.[11] The reason for holding an issue to be barred is to put an end to litigation by

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[9] *See Four Seasons Home Improvement Co. v. McCullough*, 34 Ark. App. 171, 807 S.W.2d 48 (1991); *Dolin v. Dolin*, 9 Ark. App. 329, 659 S.W.2d 954 (1983).

[10] Appellant claims that the registration action was consolidated with the quiet-title action, but consolidation never occurred. The circuit court allowed the record from the registration action to be entered into evidence as an exhibit in the quiet-title action because it contained evidence and argument relating to appellant's quiet-title arguments, but no motion to consolidate was ever filed and no order to consolidate was ever entered as required by Ark. R. Civ. P. 42(a). *See, e.g.*, *Moreland v. Hortman*, 72 Ark. App. 363, 39 S.W.3d 23 (2001). In fact, counsel for appellant conceded at the quiet-title hearing that the circuit court had already ruled in the registration action that the default judgment was valid.

[11] *Crockett v. C.A.G. Investments, Inc.*, 2011 Ark. 208, ___ S.W.3d ___ (citing *Linn v. NationsBank*, 341 Ark. 57, 14 S.W.3d 500 (2000)).

preventing a party who has had one fair trial on a matter from litigating the matter a second time.[12]

In the registration action, the appellant did not raise jurisdictional arguments until after the default judgment had been registered. However, he subsequently filed a motion to stay and permanently enjoin execution of the judgment, and a separate motion to vacate the default judgment or, in the alternative, to modify the judgment and enjoin its execution, in both motions presenting exactly the same arguments he has raised in this appeal. The circuit court rejected those arguments, upholding the validity of the default judgment against appellant, and appellant failed to obtain any court ruling to the contrary or appeal the order denying his motions. Therefore, the issue of whether the default judgment was void for lack of personal jurisdiction was barred under res judicata when appellant attempted to re-litigate it in the quiet-title action. Because the foreign default judgment had been determined to be regular on its face and had been properly registered, we cannot say that the circuit court clearly erred in denying appellant's petition to quiet title.

Affirmed.

GLADWIN and GLOVER, JJ., agree.

[12] *Id.* (citing *Francis v. Francis*, 343 Ark. 104, 31 S.W.3d 841 (2000)).